

HONORABLE JAMAL N. WHITEHEAD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VALVE CORPORATION,

Plaintiff,

v.

THOMAS ABBRUZZESE, *et al.*,

Defendants.

Case No. 2:24-cv-1717-JNW

DEFENDANTS' RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION FOR A PRELIMINARY
INJUNCTION

NOTED ON MOTION CALENDAR:
October 3, 2025

Defendants (hereinafter, "**PC Gamers**"), through undersigned counsel, hereby respond to Petitioner Valve Corporation's ("**Valve**") motion for preliminary injunction. Dkt. 79.

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24	Catherine Fisk & Erwin Chemerinsky, <i>The Failing Faith in Class Actions: Wal-Mart v. Dukes and AT&T Mobility v. Concepcion</i> , 7 Duke J. Const. L. & Pub. Pol'y 73 (2011)	3

Rules

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I. INTRODUCTION

Valve asks for the extraordinary: a mandatory preliminary injunction that would upend, not preserve, the status quo. That is the exception’s exception, reserved for the rare case where the facts and the law so clearly favor the movant that extraordinary relief is unavoidable. *Stanley v. USC*, 13 F.3d 1313, 1320 (9th Cir. 1994); *Starkgraf v. White*, No. 3:23-cv-05593-RJB-MLP, 2024 WL 2925013, at *1 (W.D. Wash. May 10, 2024). Nothing in this record comes close. Valve presses forward only by turning a blind eye to the rulings already against it. Multiple arbitrators, two orders from this Court, and one opinion from the Ninth Circuit all agree that PC Gamers’ antitrust claims must proceed in arbitration under the contract Valve wrote and enforced for years.

Blinded by willful ignorance to previous decisions, Valve now asks this Court to rewrite both statute and contract. But courts “have no warrant to redline the FAA.” *Badgerow v. Walters*, 596 U.S. 1, 11 (2022). Section 4 of the Federal Arbitration Act (“FAA”) authorizes courts to compel participation in arbitration and to confirm or vacate awards. It does not empower courts to enjoin private arbitrations already underway. The Declaratory Judgment Act (“DJA”) fares no better: it resolves concrete disputes and does not license advisory opinions so a monopolist can preview the law before choosing its next move. Valve is not asking the Court to apply the law; it’s asking the Court to stretch it—beyond the statutes Congress enacted to rescue a litigant from its own private contracts.

1 On the merits, Washington law bars one-sided, midstream modifications of
2 forum selection clauses. It treats them as both procedurally and substantively
3 unconscionable. The Restatement of Consumer Contracts agrees: no unilateral
4 modification is valid without (1) a no-punishment opt out and (2) good faith. Valve
5 offered neither of these. Instead, it forced consumers to choose between their
6 antitrust claims and their previous purchases—exactly the kind of coercion the
7 Restatement condemns as illusory and unconscionable.
8

9 The larger picture is unmistakable: Valve drafted the contract mandating
10 arbitration, compelled consumers into that forum, litigated there for years, and
11 benefited—until it unilaterally decided it preferred court. Driven by regret, it now
12 seeks a wholesale do-over—suing 572 improperly joined individuals and demanding
13 the class-wide relief it shunned for over a decade. “Poetic justice,” Judge Alsup called
14 it—forcing a powerful corporation to honor the very arbitration clause it wrote to
15 shield itself from the class actions it feared. *See* Exhibit A. That same justice applies
16 here. Neither equity nor law gives Valve a do-over. Valve “chose arbitration, and it
17 must now live with that choice.” *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564,
18 573 (2013).
19
20

21 After all the twists and turns, the ending is simple: Valve cannot meet its
22 burden on any element required for extraordinary relief. It has no chance of success
23 on the merits, no showing of irreparable non-financial harm, and the equities and
24 public interest both favor finishing the arbitrations it compelled. The Court should
25
26

1 deny Valve's motion and let the PC Gamers obtain the justice Valve has delayed for
2 years.

3 II. FACTS

4 For years Valve built and defended a system of individual arbitrations,
5 compelling consumers to resort to arbitration and shaping the forum to its liking.
6 Only when Valve unilaterally decided it preferred courts to arbitrations did Valve
7 reverse course and return to court requesting the arbitrations stop immediately.
8 The record that follows shows, step by step, how Valve designed the rules it now
9 seeks to escape.
10

11 A. The Supreme Court Green-Lights Corporate Escape From 12 Consumer Class Remedies—and Valve Embraces Arbitration

13 Over the last decade, the Supreme Court has steadily narrowed consumers'
14 collective remedies. In *Wal-Mart v. Dukes*, 564 U.S. 338 (2011) and *AT&T Mobility*
15 *v. Concepcion*, 563 U.S. 333 (2011), the Court made it harder to certify class actions
16 and easier for corporations to force consumers into individual arbitration.
17 See Catherine Fisk & Erwin Chemerinsky, *The Failing Faith in Class Actions: Wal-*
18 *Mart v. Dukes and AT&T Mobility v. Concepcion*, 7 Duke J. Const. L. & Pub. Pol'y
19 73 (2011) (attached as Exhibit B). The message was clear: companies could insulate
20 themselves from collective accountability by embedding arbitration clauses and
21 reserving unilateral power to update them. This shift gave firms like Valve a
22 powerful incentive to impose one-on-one remedies while still reaping the efficiencies
23 of mass contracting. *See id.*
24
25
26

1 In direct response to this legal landscape, Valve revised its user contract in
2 2012. Dkt. 78, Complaint ¶ 58, Exh. 4 (hereinafter, the “Valid Contract”). That
3 contract mandated arbitration of all disputes and included a delegation clause that
4 survived termination—locking Valve into individual proceedings in return for what
5 Valve hoped was a shield from class actions. Valve openly boasts that, in the five
6 years before this case, only two disputes ever reached arbitration under its
7 agreements—proof of how effectively the Valid Contract deterred individual claims
8 against it. Compl. at 21, n.23. For years Valve enjoyed the advantages: a private
9 forum, corporate-friendly rules, and dramatically reduced exposure.
10
11

12 In fact, when PC Gamers filed an antitrust class action in this Court, Valve
13 successfully asked this Court to compel arbitration, arguing the Valid Contract
14 required all issues—including arbitrability—to be resolved in arbitration. *Wolfire*
15 *Games, LLC v. Valve Corp.*, 2021 WL 4952220 (W.D. Wash. Oct. 25, 2021). This was
16 consistent with an earlier victory in favor of arbitration by Valve. Though not in the
17 antitrust context, Valve had previously tested the Valid Contract’s arbitration
18 clause against Washington consumer protection laws, prevailed in the trial court,
19 and won on appeal—earning the Ninth Circuit’s blessing for the strength of the
20 Valid Contract’s arbitration clause. *G.G. v. Valve Corp.*, 799 F. App’x 557, 558 (9th
21 Cir. 2020) (upholding final arbitration award as to signatories of the Valid
22 Contract).
23
24

25 After this Court’s ruling in *Wolfire*, the original class-action plaintiffs largely
26 stood still—apparently daunted by the task of litigating antitrust claims one by one.

1 That posture handed Valve what looked like an insurmountable advantage. But
2 where the giants of the plaintiffs' bar saw only obstacles, Bucher Law PLLC
3 recognized an opportunity to right a wrong and enforce the antitrust laws Congress
4 enacted.
5

6 The plan was bold. Organize the team, structure, and funding necessary to
7 fight the most profitable cartel in the world individually, thousands of times, in the
8 forum it chose. Capture the upswell of demand to bring Valve to justice by signing
9 up tens of thousands of consumers who were willing to proceed in arbitration.
10 Litigate those claims in quick succession, using the lessons learned from each
11 arbitration in the next. Win. And then win again. Keep fighting until each and every
12 consumer who wants compensation has their chance to claim it.
13

14 It worked. Today Valve finds itself amidst a total rout. The prevailing
15 consumers in this action have recovered an average of \$2,017 in damages each,
16 before mandatory attorneys' fees. Valve has been found liable under both Sherman
17 Act Section 1 and Section 2 and cumulatively ordered to pay more than \$2.8 million
18 to some of the PC gamers before you and their counsel. *See* Dkt. 88-2, 89-2, 90-2, 91-
19 2. With less than 0.1% of the arbitrations finished, Valve is on track to compensate
20 the arbitration consumers *billions* of dollars.
21
22

23 Facing the justice it thought it had escaped through mandatory individual
24 arbitration, Valve reversed course and filed this action seeking to enjoin the very
25 individual arbitrations it previously compelled.
26

B. Valve’s Midstream Reversal—Having Written the Rules, It Now Runs From Them

As a first step to this, on September 26, 2024, Valve unilaterally rewrote its user agreement. Compl., Exh. 3 (hereinafter, the “Invalid User Agreement”). In relevant part, the Invalid User Agreement deleted the arbitration provision in the Valid Contract and stated:

You and Valve agree that all disputes and claims between you and Valve (including any dispute or claim that arose before the existence of this or any prior agreement) shall be commenced and maintained exclusively in any state or federal court located in King County, Washington, having subject matter jurisdiction.

Invalid User Agreement, §10.

Valve attempted to notify PC Gamers of this drastic and forced change via pop-ups, blog posts, and emails, all stating the new dispute-resolution terms “require all claims and disputes to proceed in court and not in arbitration.” Dkt. 80, Declaration of Scott Lynch (“Lynch Dec.”), ¶¶ 10, 12, 16. These notices stated that the new terms would become effective unless the user terminated the user’s account by November 1, 2024. *Id.* Valve’s employees testify that PC Gamers could keep their games “forever,” yet the only way to avoid the new terms was to forfeit access to thousands of dollars’ worth of purchases. Although the gamers were represented by counsel and the change purported to undo ongoing legal proceedings, Valve sent the notice directly to the PC Gamers rather than through their lawyers.

Understandably, despite the new forum selection clause, the American Arbitration Association (“AAA”) administration declined to close thousands of PC Gamer arbitrations in the absence of a stipulation by the parties. Compl. ¶ 163. The

AAA thereafter left the question of arbitrability and the arbitrator's jurisdiction to the individual arbitrators themselves, consistent with this Court's prior order. *Id.* ¶ 164; *Wolfire*, 2021 WL 4952220, at *2.

With the AAA administration refusing to close the arbitrations, Valve submitted the jurisdiction question to the arbitrators. *Id.*, ¶¶ 196–197. The arbitrators generally ruled in one of three ways: (i) the matter was stayed pending further guidance by this Court; (ii) the matter was stayed under *Coinbase, Inc. v. Suski*, 602 U.S. 143 (2024) pending a ruling by this Court on the arbitrator's jurisdiction; or (iii) the matter proceeded under the Valid Contract because the arbitrator has jurisdiction to resolve questions of arbitrability, and found that Valve's attempted retreat from arbitration were ineffective. Dkt. 81, Declaration of Andrew Fuchs ("Fuchs Dec."), ¶ 45.

One ongoing arbitration exemplifies the last form of ruling. Arbitrator Janice Sperow issued a comprehensive order rejecting Valve's repeated requests for a stay and its objections to jurisdiction. Declaration of Will Bucher ("Bucher Dec."), Exh. B ("Sperow Order"). Her order—grounded in the FAA, AAA rules, and this Court's prior rulings—squarely addressed Valve's arguments and made the following findings:

- "Under the FAA, the parties thus clearly and unmistakably delegated arbitrability issues to the arbitrator in the [Valid Contract]. Indeed, virtually every circuit agrees that the parties' incorporation of the AAA's arbitration rules constitutes clear and unmistakable evidence that they agreed to arbitrate

1 arbitrability.” citing *Oracle Am., Inc. v. Myriad Grp. A.G.*, 724 F.3d 1069, 1074 (9th
2 Cir. 2013). Sperow Order at 10.

3 • “Rule 14 [of AAA Consumer Arbitration Rules] severs the arbitration
4 provision from the overall contract and treats it as a separate agreement for
5 enforcement purposes. Consequently, the Arbitrator has jurisdiction under Rule 14
6 to determine jurisdiction, the contracts’ validity, the contracts’ scope, the contracts’
7 enforceability, and the parties’ related disputes.” Sperow Order at 11.

8
9 • This Court “already found [Valid Contract] delegation clause
10 enforceable. Further, the delegation clause survives the [Valid Contract’s]
11 termination or expiration. See [Valid Contract] at § 9.D. Accordingly, an arbitrator
12 must adjudicate all disputes regarding its enforceability in the first instance.”
13 Sperow Order at 12.

14
15 • “[U]nder *Coinbase*, an arbitrator may decide the jurisdictional dispute
16 posed by two different versions of the same agreement already before the tribunal.”
17 Sperow Order at 13.

18
19 • “[U]nder *Coinbase*, an arbitrator may decide the jurisdictional dispute
20 in a proceeding already pending before the tribunal when a party alleges that the
21 tribunal no longer has the jurisdiction it previously conferred upon it.” Sperow
22 Order at 14.

23
24 • “[T]he Arbitrator agrees with claimants that [Valve] waived the
25 specific basis for the lack of jurisdiction it now advances.” Sperow Order at 16.
26

1 • Valve “submitted the question of arbitrability to this tribunal for
2 adjudication and may not now claim it lacks such authority.” Sperow Order at 17.

3 • “[T]ribunals determine jurisdiction at the time of filing, not upon later
4 changed circumstances and events,” and “that jurisdiction properly existed at the
5 time claimants began these arbitrations.” Sperow Order at 18.

7 • Valve “must now stand by its prior consent [to arbitrate the dispute].”
8 Sperow Order at 19.

9 • Valve “would violate the implied covenant of good faith and fair
10 dealing if it applied the [Valid Contract’s] unilateral modification clause
11 retroactively to these pending arbitrations.” Sperow Order at 22.

13 • The claimants reasonably relied on Valve’s consent to jurisdiction in
14 prosecuting their claims and forcing them to withdraw the claims this late in the
15 proceeding would cause irreparable injury. Sperow Order at 23

17 • Even absent the legal basis found above, “Factual disputes [as to
18 Valve’s intent and circumvention of the PC gamers’ counsel] preclude dismissal.”
19 Sperow Order at 23-24.

20 • “Under [Valve’s] position, all consumer arbitration contracts would
21 become meaningless because the companies could simply change them at will.”
22 Sperow Order at 24

24 • “[T]he Arbitrator refuses to enforce as illusory and unconscionable the
25 [Valid Contract] and/or [Invalid User Agreement’s] unilateral modification clauses
26

1 and other provisions, if any, to the extent [Valve] seeks to enforce them retroactively
2 to claims already accrued and pending.” Sperow Order at 25.

3 • “[C]onsistent with the FAA’s strong federal policy favoring
4 arbitration, respondent’s unilateral changes can only apply to claims filed after its
5 effective date because to do otherwise would destroy arbitration envisioned by the
6 FAA as a meaningful, genuine, and non-illusory alternative dispute resolution
7 process.” Sperow Order at 25.

8
9 Sperow’s order reflects what is happening in dozens of ongoing arbitrations:
10 Valve wrote the rules, arbitrators are applying them, Valve is losing, and Valve
11 wants a do-over. But, as Judge Alsup put it when another company tried to escape
12 thousands of individual arbitrations it had also agreed to, this is not corporate
13 injustice—it is poetic justice:
14

15 THE COURT: You made the agreement. Your law firm and all
16 the defense law firms have tried for 30 years to keep plaintiffs out of
17 court in employment cases. And you’ve gotten a lot of success in the
18 courts.

19 After so finally somebody says: Okay, we’ll take you to
20 arbitration. And suddenly it’s not in your interest any more. And now
21 you’re wiggling around trying to figure some way to squirm out of your
22 own agreement.

23 I am not—you know, I’m a little older than you and there is a lot
24 of poetic justice here.

25 Exh. A.
26

On October 18, 2024, Steam filed a petition to enjoin the ongoing arbitrations. Dkt. 1. On August 1, 2025, the Court struck Valve’s petition as improperly filed and gave Valve leave to file an amended complaint. Dkt. 76.¹

C. Having Lost Before Arbitrators and With Its Petition Struck, Valve Returns to Court Seeking Extraordinary Relief on Meritless Grounds

On August 21, 2025, Valve filed the instant complaint against 572 individual PC Gamers, alleging four causes of action but omitting any allegation of joint or several liability required under Rule 20(a)(2)(A). After 52 paragraphs of narrative that amounts to an unprofessional, one-sided attack on PC Gamers’ counsel, Valve nonetheless asserts jurisdiction under Section 4 of the FAA, 28 U.S.C. § 1331, and supplemental jurisdiction under § 1367.

Valve simultaneously moved for a preliminary injunction seeking to “enjoin Defendants from continuing to pursue arbitrations before the American Arbitration Association.” Dkt. 79 at 1. It seeks sweeping relief against all PC Gamers regardless of the status of their individual arbitrations or notice to them, despite its own admission that dozens of PC Gamers only “accepted” the new agreement by default or subsequent transactions. Lynch Dec. ¶¶ 25–28.

In other words, there are (at least) two classes of defendants here. Some only “accepted” the Invalid User Agreement by receiving Valve’s notice by email. They did not manifest any assent to the new terms and did not terminate their accounts

¹ Hours later, Valve served the improper petition along with an incorrect summons threatening default on a knowingly represented party. Dkt. 77.

1 by Valve's arbitrary deadline of November 1, 2024. Valve is unable to confirm
2 whether these PC Gamers even received this email because it "does not collect a
3 user's name, physical address, or phone number when he or she creates a Valve
4 account." Lynch Dec. ¶ 4. Despite this lack of notice—so stark it raises Rule 11
5 concerns—Valve seeks the extraordinary remedy of a preliminary injunction to halt
6 these PC Gamers' antitrust arbitrations.
7

8 Valve portends "Accepting the arbitrator's finding that the arbitration
9 provision was unenforceable, on September 26, 2024, Valve removed the arbitration
10 provision from the [Valid Contract]." Dkt. 79 at 6:21–22. But the record tells a
11 different story, with Valve asserting different positions in different forums. For
12 months following the ruling that the Valid Contract was unenforceable by Valve
13 against the *Elliott* plaintiffs, Valve continued to argue in the PC Gamer's
14 arbitrations the Valid Contract remained enforceable. On September 10, 2024—
15 nearly three months after the *Elliott* rulings—Valve argued in PC Gamer Greg
16 Fish's arbitration "The [Valid Contract] governs Valve's relationships with
17 Claimants and is enforceable." Bucher Dec., Exh. A.
18

19 This action is Valve's desperate attempt to take back those words. Valve
20 drafted the rules, compelled PC Gamers into arbitration, and participated in
21 arbitration, and now seeks to undo that system in court. Equity provides no such
22 remedy.
23
24
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26

III. LEGAL STANDARD

Injunctive relief is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). The threshold question is what type of injunction is at issue. A prohibitory injunction preserves the status quo; a mandatory injunction compels change. *Starkgraf*, 2024 WL 2925013, at *1 (citing *Stanley*, 13 F.3d at 1320). The latter is “particularly disfavored” and issued only where the facts and law clearly favor the movant. *Anderson v. United States*, 612 F.2d 1112, 1114–15 (9th Cir. 1979).

The status quo is not whatever baseline a litigant prefers—it is “the last uncontested status which preceded the pending controversy.” *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963). Here, that was ongoing consumer arbitrations, compelled under Valve’s agreements and litigated for months. Halting them would not preserve the status quo; it would upend it.

That makes Valve’s request mandatory in nature. It does not seek to maintain the posture of the parties but to order hundreds of arbitrations to stop. Such relief demands “extreme or very serious damage” and is never granted where the alleged injury is compensable in damages. *Anderson*, 612 F.2d at 1115. And as the Ninth Circuit has stressed, mandatory injunctions “are not issued in doubtful cases.” *Id.*

In sum, the Court should adopt the heightened standard for extraordinary relief—the exception’s exception. That means Valve must show (1) the facts and law

1 clearly favor it, (2) extreme, non-financial damage, and (3) no doubt at all about
2 entitlement. *Id.*; *Stanley*, 13 F.3d at 1320. Valve falls well short.

3 Valve's opening gambit is to coax this Court into applying the *Winter* factors
4 as if this were an ordinary case. Courts sometimes do so when no one objects and
5 the status quo was the parties never agreed to arbitrate. *See, e.g., Goldman, Sachs*
6 *& Co. v. City of Reno*, 747 F.3d 733, 735 (9th Cir. 2014). For the reasons above, this
7 Court should apply the heightened mandatory-injunction standard. But, even if it
8 were to apply the more relaxed, baseline *Winter* analysis used in other cases, Valve's
9 extraordinary request for improperly joined, class-wide relief still fails.
10
11

12 IV. ARGUMENT

13 Valve fails to carry its burden on every element. As the sections below show,
14 any one of these defects would defeat its motion; together they make denial
15 inevitable.

16 A. Valve Has No Chance of Succeeding on the Merits—Let Alone 17 Clearly or Likely

18 Valve will not succeed on the merits. Under the law of the forum, the process
19 was coercive, the substance one-sided, and unsettled state law erases any “clear”
20 likelihood of success. Federal law adds more nails: this Court lacks jurisdiction to
21 grant the speculative relief Valve demands, and equity—waiver, estoppel, judicial
22 estoppel—locks Valve into the forum it initially chose. The Restatement of
23 Consumer Contracts confirms no punishment-free opt-out, no good faith, and no
24 midstream revocation. On this record, Valve has no chance of success.
25
26

1 **1. Arbitrators, This Court, and the Ninth Circuit Have Already**
2 **Spoken—Valve Must Overturn Them All**

3 Valve’s reversal has been tested before every forum that matters. Ten
4 arbitrators and a former judge—Saydah, Badal, Gaglione, Gilman, Kingsley,
5 Morrill, Goins, Jossen, Sperow, Ohashi, and Samas—have all ruled that the Valid
6 Contract controls and that Valve’s attempted rewrite is ineffective.² Bucher Dec.,
7 Exh. C. This Court itself compelled arbitration of “all issues—including
8 arbitrability” under the same Valid Contract. *Wolfire*, 2021 WL 4952220. And the
9 Ninth Circuit, ruling on this very contract, upheld the arbitration clause in *G.G.*,
10 799 F. App’x at 558, confirming that arbitrability questions belong to the arbitrator.

11 Faced with this uniform record of arbitral and judicial decisions, Valve must
12 do far more than suggest a hypothetical error. It must show that every one of these
13 rulings—including those from this Court and the Ninth Circuit—is not just possibly
14 but likely wrong. Nothing in law or fact justifies such a departure. This consistent
15 line of rulings sets the backdrop for the principles of law discussed below.

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20 ² The arbitrators have already confronted the core legal questions underlying
21 Valve’s bid to evade accountability for its alleged monopoly. Three in particular
22 matter here: (a) whether the arbitrator or this Court decides the effect of Valve’s
23 unilateral amendment; (b) whether that amendment is valid and can shift
24 pending claims from arbitration to court; and (c) whether Valve maintains an
illegal monopoly or cartel under the Sherman Act. To obtain an injunction, Valve
must prevail on (b) and also on (a)—showing both that its amendment was
effective and that this Court, not the arbitrators, gets to decide that question.

25 Arbitrators have ruled on all three. On (a) and (c), decisions have varied. But on
26 (b)—the effectiveness of Valve’s amendment—PC Gamers have prevailed every
time. Valve now argues those arbitrators erred on (a) and that this Court should
substitute its judgment. Even if that were true, the unbroken line of rulings on (b)
still demolishes any claim that Valve is likely to succeed on the merits.

2. Washington Law Forecloses Valve's Mid-Arbitration Rewrite

Washington law—which Valve argues governs—dooms Valve's midstream rewrite.³ *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1175 (9th Cir. 2014) (federal courts apply state contract law when reviewing arbitration provisions). This section of the brief sets out four independent reasons under Washington contract principles why Valve's update fails as a matter of law. Each strand independently defeats Valve's bid for extraordinary relief; together they foreclose it entirely—and leave no room for equitable relief.

a. Valve's "Cancel-or-Lose-Everything" Tactics Show Procedural Unconscionability

Washington law does not bless contracts born of coercion or concealment. Procedural unconscionability zeroes in on process: Were terms hidden? Was assent real or illusory? Did the weaker party have a fair chance to reject them? *Satomi Owners Ass'n v. Satomi, LLC*, 167 Wn.2d 781, 801–02 (2009); *Zuver v. Airtouch Commc'ns, Inc.*, 153 Wn.2d 293, 304–05 (2004). The touchstone is meaningful choice.

Valve gave none. For the 42 PC Gamers it claims "assented" by silence, the supposed agreement rested on failing to cancel an account before an arbitrary deadline. That is not assent—and Valve cites no authority to the contrary. For everyone else the choice was equally illusory: accept Valve's new terms or abandon their accounts, forfeiting thousands of dollars in purchased games and credits. That Hobson's choice is no contract at all.

Washington courts have long condemned adhesion tactics imposed without negotiation and under threat of economic forfeiture. Valve's update checks every

³ Given the posture of this briefing at the preliminary injunction stage, the PC gamers advance arguments under Washington law, as proffered by Valve. The PC Gamers do not concede or waive arguments that law other than that of Washington may apply to those PC Gamers with arbitrations pending in other states.

box of those condemned practices. This is not a close call. On this record, Valve cannot plausibly show a likelihood of success—let alone that the facts and law clearly favor its position.

b. Valve’s One-Sided Limitations Trap Is Substantively Unconscionable

Washington law bars clauses that crush one side and favor the drafter. Substantive unconscionability tests the substance of the term—whether it is so one-sided or oppressive that equity cannot enforce it. *Gandee v. LDL Freedom Enters.*, 176 Wn.2d 598, 603 (2013); *Tadych v. Noble Ridge Constr., Inc.*, 200 Wn.2d 635, 645–46, 519 P.3d 199 (2022); *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 344, 103 P.3d 773 (2004).

Valve’s update reflects an extreme imbalance of bargaining power and offers PC Gamers no offsetting benefit. It was imposed unilaterally, after disputes had already arisen, on a take-it-or-lose-everything basis. Consumers had no chance to negotiate, no meaningful opportunity to opt out, and faced the threat of losing access to thousands of dollars in purchased games and credits. The claimants who have prevailed spent an average of more than \$3,000 on their Valve PC games, which they would forfeit if they deleted their account. Bucher Dec. ¶ 4. Washington law treats such tactics as paradigmatic substantive unconscionability.

And Valve did more than tilt the bargaining table. It rewrote the statute of limitations to its own advantage. Although Valve argues here that *American Pipe* tolling preserves the PC Gamers claims, it has argued the opposite in arbitration. Bucher Dec. ¶ 6, Exh. C. With a four-year limitations period for Sherman Act claims, months or years spent in arbitration may now count against consumers. Valve’s maneuver could wipe out live antitrust claims altogether. Because Valve has repeatedly shifted positions, PC Gamers cannot rely on its representation that the statute of limitations does not apply; nothing prevents Valve from reversing

1 course when it benefits. Washington courts have condemned exactly this tactic,
 2 voiding such terms outright. *Tadych*, 200 Wn.2d at 641; *Gandee*, 176 Wn.2d at 603;
 3 *Adler*, 153 Wn.2d at 344.

4 This is the textbook case for substantive unconscionability. A clause so
 5 one-sided cannot stand because Washington law deems it void. And for purposes of
 6 preliminary relief, it does more than weigh against Valve—it forecloses finding that
 7 Valve is likely to succeed on the merits.

8 **c. Any Doubt in Washington Consumer Contract Law**
 9 **Bars Equitable Relief**

10 Washington law has never blessed the tactic Valve tries here. No appellate
 11 court has squarely allowed a company to rewrite consumer contracts midstream to
 12 erase arbitration rights already invoked. That silence matters. Even if the lack of
 13 authority in state law is charitably viewed as unsettled,⁴ a preliminary injunction
 14 is especially inappropriate because the movant cannot show a clear likelihood of
 15 success on the merits. Federal courts do not guess at unsettled state law when
 16 fundamental rights are at stake—they certify. *See, e.g., Cornell v. Desert Fin. Credit*
 17 *Union*, No. CV-21-00835-PHX-DWL, 2022 WL 742724, at *4 (D. Ariz. Mar. 11,
 18 2022), *certified question answered*, 254 Ariz. 477, 524 P.3d 1133 (2023).

19 The patchwork of cases Valve cites underscores the uncertainty. For the 42
 20 defendants who, at most, received an email summarizing the updated terms,
 21 Washington law already answers: constructive notice does not form a contract.
 22 *Wilson v. Huuuge, Inc.*, 944 F.3d 1212, 1221 (9th Cir. 2019). For everyone else,
 23 Valve points to *Grant v. T-Mobile USA, Inc.*, 2024 WL 3510937 (W.D. Wash. July
 24 23, 2024). But *Grant* itself leans on *Berman v. Freedom Fin. Network, LLC*, 30 F.4th

25
 26 ⁴ For the avoidance of doubt, the PC Gamers do not adopt this charitable
 interpretation. No court has blessed the maneuver Valve attempts here because it
 is unlawful.

849, 856 (9th Cir. 2022), which analyzed California and New York law—not Washington law. That authority supplies no firm footing under Washington law and cannot support the extraordinary relief Valve seeks.

d. The Restatement of Consumer Contracts Bars Valve’s Midstream Update

Federal courts predict how the state’s highest court would rule by looking to intermediate appellate decisions, statutes, treatises, and persuasive authority. *Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 15 F.4th 885, 889 (9th Cir. 2021) (quoting *Diaz v. Kubler Corp.*, 785 F.3d 1326, 1329 (9th Cir. 2015)); *In re Kirkland*, 915 F.2d 1236, 1238 (9th Cir. 1990). Washington courts have long treated the Restatement as persuasive authority when confronting novel or uncertain contract questions. *See Berg v. Hudesman*, 115 Wn.2d 657, 668, 801 P.2d 222, 229 (1990) (contract interpretation); *Washington State Hop Producers, Inc., Liquidation Tr. v. Goschie Farms, Inc.*, 112 Wn.2d 694, 701, 773 P.2d 70, 74 (1989) (supervening frustration).

Section 3 of the Restatement of Consumer Contracts captures the prevailing approach to unilateral modifications—and Valve’s update fails on every element. *See Cornell v. Desert Fin. Credit Union*, 254 Ariz. 477, 483, 524 P.3d 1133, 1139 (2023) (adopting Restatement to address similar factual scenario); Restatement of Consumer Contracts § 3 (attached as Exhibit C).

(a)–(b). Section 3(a)–(b) demands a punishment-free opt-out or cost-free termination. Valve offered neither. Consumers faced a single “choice”: lose your games or surrender your rights. That is punishment, not free choice. *Cornell*, 254 Ariz. at 479 (section 3(a) requires “an opportunity to opt out with no change to the status quo business relationship”); Restatement §3(b).

(c). Section 3(c) requires good faith. Valve's timing and content reveal the opposite—an attempt to choke off antitrust claims and cut its arbitration costs. That is the antithesis of good faith.

(d). Section 3(d) bars modification once one party has substantially performed. Here, consumers had already filed demands and substantially performed the arbitration promise. Valve cannot now revoke it midstream.

Taken together, Sections 3(a) through 3(d) leave no room for doubt. Valve's unilateral update violates the Restatement's core requirements and fails as a matter of law. Because Washington courts treat the Restatement as persuasive authority, it makes the outcome clear: Valve has no chance of success on the merits.

e. Washington Law Leaves Valve with Zero Chance on the Merits

Taken as a whole, Washington contract law condemns Valve's midstream rewrite at every turn. The update is procedurally and substantively unconscionable. And Valve's clause fails on every element of the Restatement of Consumer Contracts, which reflects prevailing principles of law. In short, Valve's request for relief is not only unlikely under Washington law, it is improbable. This Court should deny Valve's motion for a preliminary injunction because Valve cannot show a likelihood of success on the merits under the law it asserts governs its contracts.

3. Jurisdiction Fails, Equity Prevails—Valve's Injunction Collapses Under Federal Law

Federal courts lack jurisdiction to grant the speculative relief Valve demands, and equity likewise bars it. Jurisdiction, waiver, equitable estoppel, and judicial estoppel all speak with one voice—Valve chose arbitration, induced reliance, and reaped its benefits; it cannot now flip the script and enlist this Court to unwind its chosen forum. Together these doctrines form a single, powerful

1 answer to Valve’s motion for extraordinary relief at the preliminary-injunction
2 stage.

3 **a. Article III Has Its Limits—and Federal Courts Don’t Do**
4 **Hypotheticals**

5 The Court’s earlier conclusion on jurisdiction does not settle the matter. Dkt.
6 76. Subject-matter jurisdiction is never waived and may be challenged at any time.
7 *Grupo Dataflux v. Atlas Global Grp.*, 541 U.S. 567, 571 (2004) (“Challenges to
8 subject-matter jurisdiction can of course be raised at any time prior to final
9 judgment.”); *Moore v. Maricopa Cty. Sheriff’s Office*, 657 F.3d 890, 894 (9th Cir.
10 2011) (“The Court is obligated to determine *sua sponte* whether it has subject-
11 matter jurisdiction.”). And based on Valve’s own choices, this Court lacks
12 jurisdiction over Valve’s new complaint.

13 **i. The FAA Grants No Power to Enjoin Arbitrations**
14 **—and Even If It Did, the Power Is Narrow**

15 Congress gave courts a narrow role in arbitration. Federal jurisdiction is
16 statutory and “must be neither disregarded nor evaded.” *Owen Equipment &*
17 *Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). The FAA reflects that narrow role.
18 It authorizes courts to compel arbitration or confirm or vacate awards—but
19 nowhere authorizes enjoining arbitrations wholesale. *Badgerow*, 596 U.S. at 11
(courts have no warrant to “redline the FAA”).

20 A few older cases tried to imply such a power at the very outset of an
21 arbitration. *See Societe Generale de Surveillance, S.A. v. Raytheon Eur. Mgmt. &*
22 *Sys. Co.*, 643 F.2d 863, 868 (1st Cir. 1981). But the Second Circuit later underscored
23 the gap: “nowhere does [the FAA] explicitly confer on the judiciary the authority to
24 ... enjoin a private arbitration.” *In re Am. Exp. Fin. Advisors Sec. Litig.*, 672 F.3d
25 113, 140 (2d Cir. 2011). Even when courts have recognized such power, it has been
26 limited to threshold disputes—stopping an improper arbitration before it begins.

1 *Morgan Stanley & Co., LLC v. Couch*, 134 F. Supp. 3d 1215, 1233 (E.D. Cal. 2015),
 2 *aff'd*, 659 F. App'x 402 (9th Cir. 2016) (an opposing party may “immediately bring
 3 a motion to enjoin the arbitration”).

4 Valve’s request goes far beyond that narrow lane. It asks this Court to halt
 5 hundreds of arbitrations it demanded and litigated for years. Even if some implied
 6 power to enjoin exists, it must mirror the power to compel and be construed no more
 7 broadly. *Smith v. Spizzirri*, 601 U.S. 472, 478 (2024) (the power to compel exists “to
 8 move the parties to an arbitrable dispute out of court and into arbitration as quickly
 9 and easily as possible”). The logical corollary—if any—is the Court’s power is
 10 limited to stopping an improper arbitration at its inception, not years into the
 11 proceeding after extensive participation.

12 In sum, the FAA gives this Court no power to yank the plug on arbitrations
 13 already underway. If any such power to enjoin exists at all, it is a narrow one
 14 limited to the earliest stage of a proceeding, not a license for wholesale intervention
 15 long after arbitrator jurisdiction attached.

16 **ii. The Court Has No Jurisdiction Over Hypothetical** 17 **Coercive Actions**

18 The DJA does not expand jurisdiction; it provides a remedy only when
 19 jurisdiction already exists and is discretionary even then. *Levin Metals Corp. v.*
 20 *Parr-Richmond Terminal Co.*, 799 F.2d 1312, 1315 (9th Cir. 1986). Jurisdiction
 21 under the DJA requires a real, imminent coercive action—not one conjured for
 22 convenience. *Morgan Stanley*, 134 F. Supp. 3d at 1233.

23 Valve falls well short of that test. It once claimed a defendant could file a
 24 Section 4 petition to compel arbitration if Valve refused to participate in an
 25 arbitration. Dkt. 59 at 9 (“If Valve refused to arbitrate further, Respondents could
 26 hypothetically bring a petition to compel arbitration under FAA § 4 seeking to
 compel arbitration of their federal claims.”). Yet Valve now concedes it will keep

1 participating in each individual arbitration. Fuchs Dec. ¶ 51. That concession is
2 fatal. Under settled law, the plaintiff is “master of [its] complaint” and may avoid
3 federal jurisdiction by its own pleading choices. *Caterpillar Inc. v. Williams*, 482
4 U.S. 386, 392 (1987).

5 First, “a federal court’s role is neither to issue advisory opinions nor to
6 declare rights in hypothetical cases.” *Cole-Tindall v. City of Burien*, 768 F. Supp.
7 3d 1178, 1182 (W.D. Wash. 2024) (quoting *Thomas v. Anchorage Equal Rights*
8 *Comm’n*, 220 F.3d 1134, 1138–39 (9th Cir. 2000) (en banc)). Yet Valve asks for
9 exactly that—an advisory ruling on its hypothetical withdrawal from arbitration
10 which is contradicted by the very facts it submitted in support of its own complaint.
11 Those papers concede Valve will continue to participate in every arbitration and
12 identify no credible threat to stop. Without concrete facts and a live controversy,
13 Article III jurisdiction is absent as to each individual arbitration and this Court
14 may not decide Valve’s hypothetical nonparticipation on a class-wide basis.

15 Second, Valve has not shown that walking away from arbitration would
16 terminate any proceedings or trigger a coercive Section 4 petition. Whether a
17 hypothetical withdrawal counts as default or requires further action is for each
18 individual arbitrator to decide—not this Court in bulk and without a concrete
19 dispute. Valve cites no authority, arbitral or otherwise, indicating that one party’s
20 nonparticipation would compel Section 4 intervention after an arbitrator has
21 assumed jurisdiction over the dispute.

22 In short, the DJA supplies no jurisdictional foothold here. Valve asks this
23 Court to issue an advisory opinion on a dispute it concedes will continue in
24 arbitration and that may never ripen into a coercive action. That is not a case or
25 controversy. Without a real dispute and without jurisdiction, Valve’s request for
26 preliminary relief collapses at the threshold.

b. Equity Blocks Valve's Reversal

Valve seeks to stop the very arbitrations it compelled, litigated, and confirmed awards in. Equity precludes a second bite born of regret. Waiver, equitable estoppel, and judicial estoppel converge on a simple rule: a party cannot choose a path, invite others onto it, reap the benefits, and then demand a detour when it becomes inconvenient. Especially at the preliminary-injunction stage, courts guard against such reversals. Valve built this forum; equity locks it in.

i. Having Compelled Arbitration, Valve Waived Any Right to Enjoin It

Valve compelled these arbitrations, fought for them, and benefitted from them. It cannot now reverse course and ask this Court to halt the very proceedings it demanded. That conduct waives any right to relief—let alone extraordinary relief.

In *Morgan v. Sundance, Inc.*, 596 U.S. 411, 417 (2022), the Court rejected arbitration specific judge-made rules requiring prejudice to find waiver. Waiver follows contract law, not policy. In the Ninth Circuit it takes two things—knowledge and inconsistency. *Martin v. Yasuda*, 829 F.3d 1118, 1124 (9th Cir. 2016). Valve has both. There is no dispute Valve knew its rights—it invoked the power to compel. And if defending hundreds of arbitrations for years is not inconsistent with claiming the power to enjoin those same arbitrations, nothing is. By any measure, Valve has waived whatever authority it imagines the FAA's unenumerated right to enjoin confers.

The logic of *Morgan* is unavoidable: any supposed power to enjoin arbitrations must mirror the power to compel and carry the same limits, including waiver. *See supra*, § IV(A)(2)(a)(i). Otherwise it is no true counterpart at all. Valve cannot sidestep this rule. When claims were first brought in federal forum, Valve insisted on arbitration and obtained an order compelling disputes under the

1 original contract to proceed there. By taking that position, Valve demonstrated full
 2 awareness of its right to litigate in federal court and deliberately chose otherwise.
 3 It cannot now disclaim knowledge of that right.

4 Valve then acted inconsistently with its right to enjoin arbitration by
 5 participating for years. It filed briefs, appeared at hearings, advanced its *Coinbase*
 6 arguments before arbitrators, moved to confirm completed awards in state court,
 7 and to vacate awards in this Court. Such sustained participation is textbook
 8 waiver: knowing of a right but pursuing an inconsistent course. Only after facing
 9 the burdens of its own decision to enforce individual, bilateral arbitration did Valve
 10 seek to return to court with a new theory that its contract update erases its prior
 11 conduct. *Morgan* and *Martin* foreclose that maneuver. *Martin*, 829 F.3d at 1125–
 12 26 (collecting cases).

13 Equity does not rescue a party from the consequences of its own tactics.
 14 Having chosen arbitration, invoked it, and litigated there for years, Valve cannot
 15 rebrand its strategy as entitlement to injunctive relief. At a minimum, its prolonged
 16 inconsistency precludes the extraordinary step of altering the status quo while this
 17 Court considers the merits in full.

18 **ii. Equitable Estoppel Locks Valve Into Its Chosen**
 19 **Forum—Arbitration**

20 Equitable estoppel precludes Valve from pocketing the benefits of arbitration
 21 while dodging its burdens. *Mundi v. Union Sec. Life Ins. Co.*, 555 F.3d 1042 (9th
 22 Cir. 2009). The Ninth Circuit applies state-law estoppel rules to arbitration
 23 disputes. *See Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1128 (9th Cir. 2013)
 24 (discussing *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624 (2009)); *accord Murphy*
 25 *v. DirecTV, Inc.*, 724 F.3d 1218, 1229 (9th Cir. 2013). In Washington, the rule is
 26 simple: take a position, induce reliance, and you cannot reverse course to the other

1 side's detriment. *Saunders v. Lloyd's of London*, 113 Wn.2d 330, 336, 779 P.2d 249,
2 252 (1989). Valve checks every box.

3 First, Valve spent years informing everyone that arbitration was the only
4 forum. Its Valid Contract trumpeted binding individual arbitration as the exclusive
5 path. Section 11 declared Valve would "RESOLVE ALL DISPUTES AND CLAIMS
6 BETWEEN US IN INDIVIDUAL BINDING ARBITRATION." Valve acted on that
7 promise in federal court too, compelling arbitration of antitrust claims. It then
8 doubled down before arbitrators—letters, motions, and hearings all hammering the
9 same theme: arbitration was mandatory. As late as August 2024, Valve was still
10 telling arbitrators "The [Valid Contract] governs Valve's relationships with
11 Claimants and should be enforced as a matter of law" and "arbitration
12 requirements like this are enforceable." Valve's message never wavered: these
13 cases belonged in arbitration.

14 Second, Valve induced reliance. Hundreds of PC Gamers followed its
15 directive—filing claims under the Valid Contract §11, paying AAA fees, gathering
16 evidence, investing in software and personnel to handle hundreds of parallel
17 disputes, and litigating disputes in arbitration. Valve reinforced that reliance for
18 more than a year, moving to dismiss claims based on the Valid Contract's terms
19 and urging arbitrators to enforce the Valid Contract's terms. Reliance was not just
20 foreseeable; it was invited.

21 But Valve now slams the brakes. Two years into the proceedings and after
22 repeated pro-arbitration submissions, it purports to repudiate its agreement to
23 arbitrate. Hundreds of consumers stand to lose favorable fee-shifting protections,
24 pay new fees, and start over. They would again face Valve's motions to dismiss,
25 stay, or delay—erasing years of work and wasting resources. Nothing about that
26 outcome is fair, speedy, or efficient.

1 This is exactly what equitable estoppel forbids: inducing reliance and then
 2 yanking the rug when it becomes inconvenient. Having led consumers into
 3 arbitration, Valve should be estopped from disavowing it and from obtaining an
 4 injunction to stop it.

5 **iii. Integrity Over Gamesmanship—Judicial Estoppel**
 6 **Defeats Valve’s Bid for Relief**

7 Judicial estoppel is an equitable doctrine that keeps courts from being gamed
 8 by shifting legal positions. It applies when a party changes its stance to suit the
 9 moment—something Valve has done repeatedly. *New Hampshire v. Maine*, 532
 10 U.S. 742, 750 (2001) (judicial estoppel “prohibit[s] parties from deliberately
 11 changing positions according to the exigencies of the moment”). The doctrine
 12 protects judicial integrity and shields opponents from whipsaw reversals.
 13 Washington law echoes the same principle: a party cannot treat a contract as a
 14 nullity in one case and enforce it in another. *Hardgrove v. Bowman*, 10 Wn.2d 136,
 15 138, 116 P.2d 336, 337 (1941).

16 Valve’s record fits the template. In earlier litigation—including *Wolfire*, *In*
 17 *re Valve Antitrust Litigation*, *Beer v. Valve*, and in numerous arbitrations—it told
 18 courts and arbitrators that each consumer claimant was bound to arbitrate
 19 individually under its Valid Contract, and that courts lacked power to intervene.
 20 Valve prevailed on that position repeatedly, compelling arbitration, resisting
 21 judicial interference, and even moving to confirm arbitration awards in state court.

22 Now Valve tells the opposite story. It claims the same arbitration clause it
 23 previously enforced is suddenly unenforceable, and that the FAA authorizes
 24 injunctive relief to halt the very arbitrations Valve demanded. This about-face is
 25 exactly what judicial estoppel forbids. *New Hampshire*, 532 U.S. at 750–51.

26 All three judicial estoppel factors line up. First, Valve has taken clearly
 inconsistent positions—championing arbitration when it suited its interests, and

repudiating it now. Second, allowing Valve's new position would suggest that earlier courts and arbitrators were misled when they accepted its pro-arbitration stance. Third, switching sides at this stage would hand Valve an unfair tactical advantage while inflicting heavy prejudice on hundreds of consumers who relied on its prior position and invested years in arbitration.

Judicial estoppel keeps litigation from becoming a moving target. Having picked its position and won a judicial ruling that all disputes under the Valid Contract must be brought in the forum of arbitration, Valve cannot now switch positions. This Court should hold Valve to its word and deny any extraordinary relief based on its new, contrary position.

4. Valve Must Confront—Not Ignore—the Arbitrators' Rulings

At the preliminary-injunction stage, Valve carries a heavy burden. It must show a clear likelihood of success on the merits. That requires grappling with—and disproving—every adverse ruling on jurisdiction the arbitrators have already issued. Instead, Valve acts as if those rulings never happened, as though selective blindness could erase them. Courts do not reward such tactics.⁵

The arbitrators' rulings under the AAA rules gut Valve's theory that it can oust arbitrator jurisdiction with a midstream update. First, Arbitrator Sperow held under AAA rules that "jurisdiction properly existed at the time claimants began these arbitrations." Sperow Order at 18–19. Having compelled PC Gamers to arbitration knowing jurisdiction attached at filing, Valve identifies no contractual or procedural authority allowing it to repudiate that attachment under the very forum it chose. More telling still, Valve cites no authority suggesting that this

⁵ For this motion, Valve has waived any defense to unrebutted arbitrator rulings. *See Horizon Air Indus., Inc. v. Airline Prof'ls Assoc.*, No. 2:13-CV-681 RSM, 2014 WL 2896001, at *4 (W.D. Wash. June 25, 2014) (Allowing new issues to be raised in reply unfairly would deny the opposing party a fair chance to respond)

1 Court's power to enjoin extends past the point an arbitrator has assumed
 2 jurisdiction over a party that invoked arbitration. That threshold question alone
 3 should end its motion.

4 Second, Arbitrator Sperow concluded under AAA rules that "Rule 14 severs
 5 the arbitration provision from the overall contract and treats it as a separate
 6 agreement for enforcement purposes." *Id.* at 10–11. Thus, the jurisdiction clause
 7 survives termination of the agreement itself. Even if Valve could revoke that
 8 separate contract—a dubious proposition—it never gave any party notice, much
 9 less secured assent, to revoke it.

10 Valve's silence on these rulings is telling. Unless it can convincingly overturn
 11 each one—and it cannot—it cannot show any likelihood of success on the merits or
 12 justify extraordinary injunctive relief.

13 **5. Valve Relies on Straw Men, Not Binding Precedent**

14 Valve's authorities cannot withstand scrutiny. Not one binds this Court
 15 under these circumstances, and each rests on facts or procedural postures far
 16 removed from this case. Valve compelled arbitration, litigated for years, and now
 17 seeks a midstream rewrite. Its cases cannot convert that about-face into lawful
 18 grounds for an extraordinary injunction. Courts confronting similar tactics have
 19 rejected attempts to halt arbitration where the party itself compelled it. This Court
 20 should do the same.

21 **a. Coinbase Can't Carry Valve's Water**

22 Valve leans heavily on *Coinbase*. *See generally*, Dkt. 79. But *Coinbase*
 23 decided a narrow threshold question: when two facially valid contracts—entered
 24 before any dispute—contain competing dispute-resolution clauses, the court, not
 25 the arbitrator, chooses the forum. That holding does not help Valve here.
 26

Valve’s reliance on *Coinbase* is nothing more than a request for a do-over. It seeks reconsideration of this Court’s order compelling arbitration of all issues under the first contract, including arbitrability. At that time, Valve told this Court it had no discretion and “shall” compel arbitration of all disputes that arose under the Valid Contract. *In re Valve Antitrust Litigation*, Cause No: 21-0563-JNW, Dkt. 35, at 11:19–23. It got that relief. *See id.*, Dkt. 66. Having chosen that course, Valve cannot now return and demand a different ruling on the very ground it previously pressed.

Worse still, Valve’s argument functions as an impermissible interlocutory appeal from the arbitrators’ decisions. Valve raised its *Coinbase* theory with the arbitrators, argued it fully, and at most achieved a stay pending further direction from this Court. Fuchs Dec. ¶ 45. Now, unsatisfied, it asks this Court to relitigate the rulings it invited. Ninth Circuit law shuts the door: “a party may not submit a claim to arbitration and then challenge the authority of the arbitrator to act after receiving an unfavorable result.” *Fortune, Alsweet & Eldridge, Inc. v. Daniel*, 724 F.2d 1355, 1357 (9th Cir. 1983) (citing *Ficek v. S. Pac. Co.*, 338 F.2d 655 (9th Cir. 1964), *cert. denied*, 380 U.S. 988 (1965)). Valve’s effort to convert arbitral losses into a midstream appeal is exactly what that rule forbids.

The bottom line: numerous arbitrators themselves have already rejected Valve’s *Coinbase* arguments. That leaves Valve with nothing but a request for reconsideration of *Wolfire* or an interlocutory appeal dressed up as a motion for injunction. This Court should recognize *Coinbase* for what it is—irrelevant—and move on.

b. Valve's Out-of-Forum Cases Don't Bind and Don't Persuade

Valve leans on federal cases from across the country—not Washington—to argue these disputes must now be resolved in court. But those cases only underscore why Valve's argument fails.

In *Dasher v. RBC Bank (USA)*, 745 F.3d 1111 (11th Cir. 2014), the Eleventh Circuit applied North Carolina law and held that when parties clearly express their intent to supersede a prior contract, the prior agreement—including its arbitration clause—is displaced. *Id.* at 1123. Washington has no comparable authority. Timing also distinguishes *Dasher*: by the time the bank moved to compel arbitration, the arbitration clause had already been terminated. *Id.* at 1126–27. Here, arbitration was compelled when Valve's clause undisputedly remained in force. Valve invoked that clause and must live with it. *Dasher* offers no refuge.

Pilon v. Discovery Commcn's, LLC proves the same point. 769 F. Supp. 3d 273, 286 (S.D.N.Y. 2025). There, the original contract was governed by California law, while the updated contract was governed by New York law. The court compelled the plaintiff who never accepted the update to arbitrate under the original agreement, while requiring the plaintiff who clicked through the update to arbitrate under the new one. 769 F. Supp. 3d at 286–90, 294–98. The case turned on choice of law and enforcement of whichever contract the party accepted. It says nothing about enjoining arbitrations already underway or forcing claims into court.

Ingram Micro Inc. v. Signeo Int'l, Ltd., 2014 WL 3721197 (C.D. Cal. July 22, 2014), underscores the same divide. There, sophisticated businesses not only updated their program agreement but also entered a settlement agreement releasing all claims under the earlier contract, and later executed an amended settlement agreement. *Id.* at *1. When one party later moved to compel arbitration under the original agreement, the court enjoined it because the subsequent

contracts expressly displaced the prior arbitration clause and extinguished related claims. *Id.* at *3. That negotiated commercial resolution bears no resemblance to Valve’s unilateral imposition of new terms on individual consumers mid-arbitration.

Together, these cases share two fatal flaws: they arose under different governing law than Valve advances, and they turned on clear, mutual assent in factual settings far removed from this one. Under Washington law, Valve cannot revoke arbitration midstream after compelling it. Valve picked the arbitral forum. Equity locks it into that choice.

6. Meritless Claims Merit No Injunction

Taken together, Washington contract law, federal jurisdictional limits, and equitable doctrines strip Valve of any likelihood of success. Its unilateral rewrite fails every substantive test and violates mainstream Restatement principles. With jurisdiction absent and waiver and estoppel in full effect, extraordinary relief is off the table. This failure on the merits necessarily undermines the next requirement as well: Valve cannot show irreparable harm.

B. Valve Cannot Show Irreparable Harm—Let Alone Extreme or Non-Financial Harm

“The basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies.” *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506–07 & n.8 (1959). Because Valve seeks a mandatory injunction, it must make that showing under the highest standard. Mandatory injunctions are “particularly disfavored” and require a far stronger showing than ordinary preliminary injunctions. *Stanley*, 13 F.3d at 1320. Even if the Court were to apply the more relaxed *Winter* factors, Valve’s only alleged harm is financial—and thus not irreparable.

1 **1. Adequate Remedies at Law Exist, and Valve Has Invoked**
 2 **Them**

3 The Ninth Circuit has made clear that a party seeking a mandatory
 4 injunction must show no adequate legal remedy. *Stanley*, 13 F.3d at 1320 (citing
 5 *Beacon Theatres*, 359 U.S. at 506–07). As *Stanley* put it: because the movant
 6 “requested a mandatory preliminary injunction, . . . [she] was required to
 7 demonstrate that her remedy at law was inadequate.” *Id.* Nothing in *Winter* altered
 8 this longstanding rule in this Circuit, and the Court should require Valve to show
 9 that no other adequate remedy exists at law.

10 Valve’s remedies at law are not hypothetical; it has already invoked them.
 11 Valve has sought relief before the very arbitrators it now claims lack jurisdiction.
 12 But what it dislikes is not the availability of this remedy—it is the results.
 13 Arbitrator Sperow, for example, issued a thorough decision rejecting each of Valve’s
 14 arguments for a stay and its objection to AAA jurisdiction. Bucher Dec., Exh. B.
 15 Other arbitrators have stayed proceedings awaiting this Court’s guidance. *Id.* That
 16 is the hallmark of an adequate legal remedy.

17 **2. Valve Cannot Show Irreparable Harm Even Under a Relaxed**
 18 ***Winter* Analysis**

19 Even under *Winter*’s baseline requirement of irreparable harm, Valve fails
 20 outright. Its core claim—that paying arbitration fees is *per se* irreparable harm—
 21 collides with settled law. The Supreme Court has long held that economic loss, even
 22 substantial and unrecoverable, is not irreparable. *Beacon Theatres*, 359 U.S. at
 23 506–07; *Sampson v. Murray*, 415 U.S. 61, 90 (1974). “Mere litigation expense, even
 24 substantial and unrecoupable cost, does not constitute irreparable injury.”
 25 *Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974); *see also FTC*
 26 *v. Standard Oil Co. of Cal.*, 449 U.S. 232, 244 (1980).

1 This Court already rejected Valve’s claim that parallel court and arbitration
 2 proceedings cause prejudice. In 2021, Judge Coughenour denied Valve’s request to
 3 stay the developer class action pending the consumer arbitrations, holding that
 4 “litigation costs alone are not sufficient to warrant a stay.” *Wolfire*, 2021 WL
 5 4952220, at *3 (quoting *Dependable Hwy. Exp., Inc. v. Navigators Ins. Co.*, 498 F.3d
 6 1059 (2007)). The law of the case requires the same result here.

7 Nor can Valve obtain a special procedural rule because the forum is
 8 arbitration. As the Supreme Court stressed in *Morgan*, the FAA forbids
 9 “custom-made rules” tilting the playing field “in favor of (or against) arbitration.”
 10 596 U.S. at 419. Treating arbitration costs as irreparable harm would do exactly
 11 that—create an arbitration-specific carve-out that federal law prohibits. *Winter*
 12 itself underscores this point: the Supreme Court vacated an injunction issued under
 13 the Ninth Circuit’s overly lenient “possibility” standard for irreparable harm. 555
 14 U.S. at 22 (“Our frequently reiterated standard requires plaintiffs seeking
 15 preliminary relief to demonstrate that irreparable injury is *likely* in the absence of
 16 an injunction.”). Thus, as a matter of law, this Court should reject any suggestion
 17 that Valve’s litigation fees, without more, constitute irreparable injury.

18 Factually speaking, the few cases Valve cites are on an entirely different
 19 plane from this one. In each, the party opposing arbitration had not compelled
 20 arbitration in the first place or had lost the right to arbitrate altogether. For
 21 example, in *Morgan Stanley*, 134 F. Supp. 3d at 1234, the defendant had waived
 22 his right to arbitrate. In *Oppenheimer & Co. Inc. v. Mitchell*, No. C23-67 MJP, 2023
 23 WL 2428404, at *1 (W.D. Wash. Mar. 9, 2023), the arbitration was inappropriate
 24 because the defendants were not “customers” under FINRA rules. And in *Goldman*,
 25 *Sachs & Co.*, 747 F.3d at 747, the Ninth Circuit held that Reno had disclaimed its
 26

right to FINRA arbitration. These cases stand on their own and provide no authority for treating routine arbitration costs as irreparable harm.

Valve’s own choices underscore the point. PC Gamers first sought a federal forum. Valve rejected it, compelled arbitration, and then poured resources into that process—paying fees, briefing motions, appearing before arbitrators, and even confirming awards. All 572 PC Gamers in this action initially offered to proceed on a documents-only basis, but Valve insisted on live hearings. Its complaint that it has “devoted substantial employee time to preparing for and attending arbitration hearings” flows from two self-inflicted decisions: requiring individualized arbitration and demanding live proceedings. Having deliberately chosen that path and reaped its benefits, Valve cannot rebrand the costs of its own strategy as “irreparable harm” because self-created expenses have never qualified as irreparable injury.

Nor does speculation about inconsistent arbitration rulings rescue Valve. Divergent outcomes are inherent in bilateral arbitration and a byproduct of Valve’s own decision to mandate individual proceedings. That risk is not irreparable harm; it is the inevitable result of the system Valve designed and chose. As the Supreme Court recognized in *AT&T Mobility*, bilateral arbitration carries tradeoffs, including efficiency and uniformity. 563 U.S. at 350 (“Informal procedures do of course have a cost”). Valve must live with those consequences.

C. The Balance of Equities Tilts Sharply Against Valve—Equity Does Not Rescue Opportunists

Equity weighs the harms each side would suffer. Here the scale tips hard against Valve. PC Gamers face real, irreparable injuries—lost time, dissipated investments, the erosion of their chosen forum, and potentially not being able to litigate their claim at all. Valve risks only money and inconvenience, hardships it manufactured for itself.

Valve's bid for equity rings hollow. It drafted the arbitration clause, invoked it to compel thousands of consumers out of federal court, and defended those arbitrations for years. Only when the true gravity of its decision to enforce bilateral arbitration turned unfavorable did it seek to enjoin the very proceedings it demanded. That is not equity; it is opportunism. Courts do not reward bait-and-switch tactics.

First, Valve already asked the AAA to stay these arbitrations and was denied. Fuchs Dec. ¶ 45. Its preliminary-injunction motion here is thus not a first request but a second bite at the same apple—an attempt to obtain from this Court what it could not get from the arbitral forum it chose. Equity disfavors such forum-shopping and provides no basis to grant relief already refused elsewhere.

Second, unlike in *Oppenheimer* or *Morgan Keegan*, the predicate assumption here is that the parties did agree to arbitrate. 2023 WL 2428404, at *1; *Morgan Keegan & Co. v. McPoland*, 829 F. Supp. 2d 1031, 1036 (W.D. Wash. 2011). Valve wrote the clause, compelled its enforcement, and defended hundreds of arbitrations without protest. Equity cannot reward a party that reaps the benefits of arbitration only to declare it unfair when the tide turns. Holding parties to their bargains is itself an equitable principle, and it weighs heavily against Valve.

Third, PC Gamers will suffer concrete prejudice from an injunction. Many have invested years of effort and resources prosecuting their claims in arbitration. Forcing them to abandon those proceedings now would erase that investment, risk statutes of limitations, and deprive them of timely adjudication of antitrust claims. Resetting them in court would invite forfeiture of rights and impose duplicative costs on consumers least able to bear them.

Fourth, equity considers the conduct of both sides. Valve attempts to portray PC Gamers' counsel as vexatious, but arbitrators and courts have repeatedly

1 rejected this characterization and found the opposite—it is Valve who is seeking to
 2 increase the time and expense of these litigations. In awarding Mr. Fish interest
 3 on his award, Arbitrator Goins found Valve’s litigation strategy was advanced

4 primarily for the purpose of delaying the litigation or increasing the cost
 5 thereof. . . . including but not limited to reversing its position as to the
 6 appropriate forum for resolution of this case, attempting to unilaterally
 amend the underlying arbitration agreement after this proceeding had
 been pending for many months, and filing multiple motions to dismiss.

7 Dkt. 88-2 at 4.

8 Similarly, in Valve’s failed bid to sue the PC Gamers’ attorneys, the
 9 Washington Court of Appeals unanimously held “The conduct Valve complains of—
 10 the filing of thousands of individual arbitration requests—is a direct result of its
 11 own agreement barring class actions and prohibiting collective or representative
 12 arbitration.” *Valve Corp. v. Bucher L. PLLC*, 571 P.3d 312, 321 (Wash. Ct. App.
 13 2025). “On this particular issue, Valve is hoist by its own contractual petard.” *Id.*
 14 n.6.

15 To extent this court has doubt who the bad actor is here, the AAA has
 16 procedures to address misconduct, including sanctions, fee-shifting, and dismissal.
 17 Valve has already sought *all* these remedies in *all* the underlying arbitrations
 18 brought by the PC Gamers. Bucher Dec. ¶ 5. Valve was not successful. *Id.* Equity
 19 does not require this Court to step in as super-arbitrator to police conduct that
 20 arbitral forums are already managing simply because Valve is dissatisfied with the
 21 result.

22 Fifth, the PC Gamers would suffer irreparable harm if an injunction were
 23 granted preliminarily and then lifted. Arbitration proceedings are not a video game
 24 that can be paused and restarted at will. Dozens of the PC Gamers Valve hailed
 25 before this Court have already completed their final merits hearings and are
 26 awaiting final arbitral decisions. Bucher Dec. ¶ 7. Hundreds more have trials

1 scheduled for the coming months—which if stayed would need to be delayed and
 2 rescheduled, either by the arbitrator or this Court. Bucher Dec. ¶ 8. Given the
 3 volume of litigation and the extended European vacations of Valve’s counsel and
 4 employees, finding availability of both counsel and parties to schedule hearings is
 5 challenging. These trials dates, once stayed, will effectively be lost. And the
 6 logistics of rescheduling *hundreds* of deadlines if the cases are preliminary enjoined
 7 but then the PC gamers prevail would place enormous burden on the PC gamers,
 8 their counsel, and the AAA.

9 Some arbitrations will not be able to be restarted at all. Arbitrator Rubin
 10 was on track to resolve Mr. Wirth’s claim in early 2025, but granted Valve’s request
 11 for a stay when it filed this action last year. Bucher Dec. ¶ 9. Arbitrator Rubin
 12 passed away in August of 2025, placing Mr. Wirth’s claim in limbo. *Id.* And it is not
 13 just arbitrators. Valve notes in its motion that Valve’s delay tactics have meant
 14 that some PC Gamers have already died waiting for justice.

15 **D. The Public Interest Favors Enforcing Arbitration Agreements—Not**
 16 **Rewriting Them Midstream**

17 The Federal Arbitration Act embodies a “liberal federal policy favoring
 18 arbitration agreements.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460
 19 U.S. 1, 24–25 (1983). To quote Valve’s own successful motion to compel these
 20 consumer cases to arbitration to begin with:

21 Ninth Circuit authority and other decisions from this Court
 22 support the conclusion that the SSA’s arbitration agreement is just as
 23 enforceable against the Individual Plaintiffs here as it was in *G.G.*,
 24 where this court recognized the strong federal policy favoring
 25 arbitration. *See* 2017 WL 1210220, at *2. The Ninth Circuit has
 26 embraced the strong public policy favoring arbitration by repeatedly
 enforcing arbitration agreements.

In re Valve Antitrust Litigation, Cause No: 21-cv-0563-JNW, Dkt. 35.

1 The public—including millions of Valve users nationwide—has a stake in
 2 Valve honoring the terms of its own consumer contract. There is no public interest
 3 in a monopolist rewriting its contract mid-arbitration to hobble antitrust claims
 4 brought by its own customers.

5 Valve insists the public interest favors an injunction, invoking cases holding
 6 there is no public interest in forcing a party to arbitrate when it never agreed to do
 7 so. *See Oppenheimer*, 2023 WL 2428404, at *6; *Morgan Keegan*, 829 F. Supp. 2d at
 8 1037. Those cases are inapposite for the reasons discussed above. But moreover,
 9 the argument that Valve seems to be making boils down to “we believe we are likely
 10 to succeed on the facts and the law, and if we do, public policy favors enforcing the
 11 law.” But at the preliminary injunction stage, public policy is a *separate* element
 12 Valve must prove *in addition to* its strained argument that it is likely to prevail.

13 Properly assessing public policy as its own element, the corpus of case law is
 14 clear that public policy favors continuing in arbitration. *See Ferguson v. Corinthian*
 15 *Colleges, Inc.*, 733 F.3d 928, 932 (9th Cir. 2013) (The FAA “reflects an ‘emphatic
 16 federal policy’ in favor of arbitration.”) (quoting *Marmet Health Care Ctr., Inc. v.*
 17 *Brown*, 565 U.S. 530, 533 (2012)); *O’Connor v. Uber Techs., Inc.*, 904 F.3d 1087,
 18 1093 (9th Cir. 2018) (“[Q]uestions of arbitrability must be addressed with a healthy
 19 regard for the federal policy favoring arbitration.”) (quoting *Moses H.*, 460 U.S. 1 at
 20 24); *Zoller v. GCA Advisors, LLC*, 993 F.3d 1198, 1201 (9th Cir. 2021) (The FAA
 21 “declares a ‘liberal federal policy favoring arbitration’ and provides that such
 22 agreements ‘shall be valid, irrevocable, and enforceable, save upon such grounds as
 23 exist at law or in equity for the revocation of any contract.’”) (quoting *AT&T*
 24 *Mobility*, 563 U.S. at 339); *Zuver*, 153 Wn.2d at 301–302 (same).

25 Valve now insists it is “not asking the Court to interfere mid-arbitration with
 26 a decision delegated to an arbitrator or arbitration provider.” Dkt. 79 at 24. But

1 this Court already held—at Valve’s urging—that jurisdictional questions belong to
2 the arbitrator. *Wolfire*, 2021 WL 4952220, at *1 (citing *Mitsubishi Motors Corp. v.*
3 *Soler Chrysler-Plymouth*, 473 U.S. 614, 626 (1985)) (“[A]ny doubts concerning the
4 scope of arbitrable issues should be resolved in favor of arbitration”). Hundreds of
5 PC Gamers are now proceeding under arbitrators’ rulings that the Valid Contract
6 lies within their jurisdiction and that Valve’s purported amendment is ineffectual.
7 To suggest that halting those proceedings is anything but mid-arbitration
8 interference defies both law and plain English.

9 The same public policy that favors arbitration to ease the load on U.S. courts
10 applies exponentially here. Enjoining 572 pending arbitrations on the eve of trial—
11 while statutes of limitation run—would force hundreds of individual antitrust
12 actions back into federal court. The resulting burden would be staggering. This
13 Court would have to unravel different procedural postures, revisit binding
14 arbitration rulings, and decide how to treat PC Gamers who have completed
15 hearings but have not yet received awards. It would also have to schedule hundreds
16 of jury trials—many immediately, as dozens of cases are trial-ready. Public policy
17 does not support shifting that massive burden onto an already busy judiciary.

18 Public interest also encompasses judicial restraint. Federal courts should not
19 issue advisory opinions or stretch jurisdiction beyond statutory limits. *Badgerow*,
20 596 U.S. at 11. Valve’s request effectively asks this Court to declare the
21 enforceability of a new clause and enjoin arbitrations it concedes it will continue to
22 defend. Granting that relief would expand jurisdiction and undermine public
23 confidence in the courts’ limited role.

24 The bottom line: the public interest weighs squarely against Valve’s request.
25 Granting it would distort the FAA, destabilize consumer contracts, and reward
26 strategic gamesmanship.

E. Adequate Security: The Price of Valve’s Extraordinary Injunction

Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). Put plainly: without a bond, a party wrongfully enjoined has no remedy. *BankDirect Cap. Fin., LLC v. Cap. Premium Fin., Inc.*, 912 F.3d 1054, 1057 (7th Cir. 2019) (“in the absence of a bond, a litigant injured by an injunction later determined to have been improper does not have a remedy.”).

Valve asks this Court to halt 572 individual arbitrations—an extraordinary request with extraordinary consequences. Enjoining these arbitrations would strand PC Gamers with sunk costs, wasted attorney time, and the loss of procedural features they relied upon when Valve compelled them to arbitrate. The best estimate of the harm at stake is stark: no award to date has been for any less than \$750,000.⁶ Multiply those numbers across the 572 arbitrations Valve seeks to enjoin and the total exposure just for these 572 PC Gamers exceeds \$420 million. That is the risk Valve seeks to shift to the very people it compelled into arbitration.

Rule 65(c) exists to prevent precisely that result. The rule makes clear that when a party seeks preliminary relief—especially a mandatory injunction altering the status quo—it must post security sufficient to protect every enjoined party if the injunction later proves wrongful. Without a meaningful bond, the entire financial risk of Valve’s shifting litigation strategies would fall on PC Gamers.

⁶ This figure includes the mandatory treble damages, fees, and costs already awarded but excludes the substantial additional interest, collection costs, and litigation expenses necessary to enforce those awards—making it a conservative estimate. Bucher Dec. ¶ 10.

1 It would be inequitable to leave each individual PC Gamer—sued separately
 2 at Valve’s insistence—unprotected from Valve’s about-face. A substantial bond is
 3 therefore required. Under the Court’s discretion, it could increase the amount if it
 4 is reasonable to assume that fees and costs in court would exceed those in
 5 arbitration. But at a bare minimum, the Court should require Valve to post 572
 6 separate \$750,000 bonds for each PC Gamer whose arbitration is enjoined to cover
 7 the damage its injunction would impose if the arbitrations are enjoined incorrectly.
 8 Equity demands no less.

9 V. CONCLUSION

10 For the above reasons, PC Gamers respectfully request that the Court reject
 11 Valve’s request for extraordinary relief and deny its motion for a preliminary
 12 injunction.
 13

14 DATED this 19th day of September, 2025.

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1 *I certify that this motion contains less than 12,000 words under Court order. Dkt. 86.*
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CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused a true and correct copy of the foregoing Defendants' Response In Opposition To Plaintiff's Motion For A Preliminary Injunction served upon counsel of record herein, as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: September 19, 2025 at Seattle, Washington.

s/ William R. Burnside
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